Before the
Federal Trade Commission
Washington, D.C.

In the Matter of	)	
	)	
Hearings on Competition and Consumer	)	
Protection in the 21st Century	)	Docket ID: FTC-2018-0048

COMMENTS OF DIGITAL CONTENT NEXT

I. Introduction

Digital Content Next (DCN) appreciates the opportunity to submit comments in the above-captioned proceeding.[1] Founded in 2001, DCN is the only trade organization dedicated to serving the unique and diverse needs of high-quality digital content companies which enjoy trusted, direct relationships with consumers and marketers. DCN's members are some of the most trusted and well-respected media brands that, together, have an unduplicated audience of 223,098 million unique visitors or 100 percent reach of the U.S. online population.

II. Consumer Expectations and Trust

As the FTC considers the complex public policy issues related to the digital ecosystem, we encourage you to view each issue from the perspective of the consumer. Consumers have a wide variety of places where they can find quality investigative reporting, breaking news, sports, entertainment or comedy. When they visit a site or app, they expect their data may be collected to ensure the service works properly, combat fraud, authorize subscriptions, personalize content or advertising, and recognize a return visitor among other things. These data collection and use cases tend to meet consumer expectations because there is a direct benefit to the consumer experience and because the consumer's data is collected and used transparently within the same

[1] *Hearings on Competition and Consumer Protection in the 21st Century,* Docket ID: FTC-2018-0048

context. If the consumer does not like how their data is being used, the consumer can communicate their dissatisfaction or they can choose to visit a competing site or app. Given the plethora of choices for consumers, publishers are acutely aware that preserving consumer trust is key to building a relationship with the consumer.

Consumer trust can be eroded when their data is collected in one context but used in another without transparency or an opportunity for the consumer to exercise choice. The ongoing scandal involving Facebook and Cambridge Analytica is a good example. In this case, Facebook allowed an outside company to collect data about Facebook users and their friends for what consumers expected was a benign purpose and solely within the confines of the Facebook service. However, the data was ultimately shared with multiple parties and used for unexpected purposes. Also, it is important to note that the data collection provided no benefit to the consumer.

In June, DCN commissioned[2] a survey of consumers to better understand consumer expectations with regard to how Facebook collects and uses data. The results underscore that consumers generally expect their data to be collected and used within the same context. However, our survey found that 72% of consumers do not expect Facebook to collect data about a person's online activities on a non-Facebook webpage if a person does NOT click the 'Like' button.

Similarly, Google collects massive amounts of data about consumers. In some cases, consumers expect this data collection in order to facilitate the use of a service such as Google Maps. However, consumers are not likely to expect that Google collects and merges data about consumers from every consumer-facing and non-consumer-facing digital service they operate.

While these examples highlight data collection that does not meet consumer expectations, it is also important to note that consumers have no way to avoid this data collection or to exercise meaningful choice over how their data is used.

III. Competition

DCN is concerned that the current digital marketplace is unfairly tilted in favor of two companies – Google and Facebook. Combined, these two companies account[3] for 73% of digital advertising dollars and 90% of all growth[4] in the market. This revenue is generated by selling advertising on their platforms but also selling taking a cut of the growing advertising technology services used by publishers to sell advertising on their own websites. The revenue gained from their dominant advertising businesses allows them to offer "free" services. What makes these two companies so dominant is their ability to collect data about consumers at an unmatched scale

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[2] http://www.niemanlab.org/2018/04/jason-kint-here-are-5-ways-facebook-violates-consumer-expectations-to-maximize-its-profits/

[3] https://www.cnbc.com/2017/12/20/google-facebook-digital-ad-marketshare-growth-pivotal.html

[4] http://adage.com/article/digital/iab-digital-ad-revenue-catapulted-88-billion-2017/313464/

and to use that data to sell targeted advertising against publishers' content without paying a fair share.

While they offer "free" services such as Facebook, Instagram, Gmail, Google Maps and Android devices, the scale of their data collection is broadened by their ability to collect data as the provider of non-transparent 3rd party services such as social media widgets (e.g. the "like" button) and ad serving technologies. According to 2016 research[5] by Steven Englehardt and Arvind Narayanan over 70% of the top 1 million websites included Google code on their sites which allows Google to track users browsing history. Facebook recently disclosed to UK Parliament, it can track consumers across an estimated 8.4 million websites. As a result, it is impossible for consumers or publishers to avoid interacting with Facebook and Google.

However, given the asymmetry of market power, it is very difficult for any company to negotiate fair terms or to pull their content from these aggregators. For example, with only a few weeks before European regulators began to enforce the General Data Protection Regulation (GDPR), Google notified[6] the industry of the legal terms that companies would need to accept in order to continue using Google services. The non-negotiable terms asserted broad control over all data on a publisher's site, assigned all liability for data misuse (even by Google) to the publisher and required the publisher to gain consumer consent for Google's data collection and use activities. While other companies in the ecosystem deployed similar terms, it is notable that only Google has refused to negotiate or even engage in a meaningful conversation.

Another example is Google's Accelerated Mobile Pages (AMP), which is a set of code and guidelines developed by Google to improve the load times of webpages. Essentially, AMP pages are copies of a webpage that have been automatically pre-loaded on Google's servers, which enables these pages to be shown much more quickly. However, the code and guidelines for AMP restrict some types of display advertisements and rely heavily on standardized banner ad units, which is a core offering of Google. In addition, while AMP is voluntary, Google prioritizes AMP pages in search results for all users and without giving a choice; Google also only includes AMP pages in the carousel at the top of the mobile search page. As a result, publishers must use AMP if they simply want to maintain their search traffic. Finally, because the AMP pages are loaded on Google's servers, Google gains access to first party data, which further cements their ability to collect massive amounts of consumer data to sell targeted advertising.

We are concerned about the impact these dominant companies are having on the digital ecosystem and we urge the FTC to investigate how best to ensure the marketplace is healthy and competitive.

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[5] http://randomwalker.info/publications/OpenWPM_1_million_site_tracking_measurement.pdf

[6] https://digiday.com/media/googles-gdpr-approach-raises-publisher-concerns/

IV. Conclusion

We appreciate the FTC's leadership on public policy issues of importance to consumers. Thank you for the opportunity to submit these comments and we look forward to participating in the proposed workshops.

Sincerely,

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